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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VACATIONAL BIKE RENTALS,
LLC, A LIMITED LIABILITY
COMPANY,

Plaintiff,

vs.

KITZUMA CORPORATION, A
CORPORATION, DBA KITZUMA
CYCLING LOGISTICS;
GETCARRIER, LLC, A LIMITED
LIABILITY COMPANY; SPEED
EXPRESS, INC., A CORPORATION;
EMPIRE NATIONAL, INC., A
CORPORATION

Defendants.

Case No.: 2:24-cv-07105 CAS

**DEFENDANT EMPIRE
NATIONAL, INC.'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES**

Hearing Date:

Judge Christina A. Snyder

Defendant Empire National, Inc. ("Defendant")

PARTIES

1. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1 of the First Amended Complaint, and therefore denies them.

2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 2 of the First Amended Complaint, and therefore denies them.

3. Defendant lacks knowledge or information sufficient to form a belief

1 about the truth of the allegations contained in paragraph 3 of the First Amended
2 Complaint, and therefore denies them.

3 4. Defendant lacks knowledge or information sufficient to form a belief
4 about the truth of the allegations contained in paragraph 4 of the First Amended
5 Complaint, and therefore denies them.

6 5. Defendant admits that it is a corporation based in Fletcher, NC and has
7 federal motor carrier operating authority throughout the United States, as to all other
8 allegations of Paragraph 5 Defendant denies the same.

9 6. Answering paragraph 6 of the First Amended Complaint, this paragraph
10 contains no factual allegations, to the extend a response is required Defendant denies
11 the same.

12 **JURISDICTION AND VENUE**

13 7. Answering paragraph 7 of the First Amended Complaint, Defendant
14 does not contest venue in the Central District of California, as to all remaining
15 allegations Defendant lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations and therefore denies them.

17 8. Answering paragraph 8 of the First Amended Complaint, Defendant
18 does not contest subject matter jurisdiction, as to all remaining allegations Defendant
19 lacks knowledge or information sufficient to form a belief about the truth of the
20 allegations and therefore denies them.

21 9. Answering paragraph 9 of the First Amended Complaint, Defendant
22 does not contest subject matter jurisdiction, as to all remaining allegations Defendant
23 lacks knowledge or information sufficient to form a belief about the truth of the
24 allegations and therefore denies them.

25 10. Answering paragraph 10 of the First Amended Complaint, Defendant
26 does not contest subject matter jurisdiction and admits that the Carmack Amendment
27 is Plaintiff's exclusive remedy in this action.

28 11. Answering paragraph 11 of the First Amended Complaint, Defendant

1 does not contest venue in the Central District of California.

2 **FIRST CAUSE OF ACTION**

3 **(Carmack Amendment Liability Against All Defendants)**

4 12. Answering paragraph 12 of the First Amended Complaint, Defendant
5 incorporates the foregoing paragraphs as though fully set forth herein

6 13. Defendant denies the allegations contained in paragraph 13 of the First
7 Amended Complaint.

8 14. Defendant denies the allegations contained in paragraph 14 of the First
9 Amended Complaint.

10 **SECOND CAUSE OF ACTION**

11 **(Breach of Contract Against All Defendants)**

12 15. Answering paragraph 15 of the First Amended Complaint, Defendant
13 incorporates the foregoing paragraphs as though fully set forth herein

14 16. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
15 December 13, 2024, this cause of action is dismissed against Defendant Empire and
16 therefore not alleged against Defendant, to the extent a response is required Defendant
17 denies the allegations in Paragraph 16 (both of them) of the First Amended Complaint.

18 17. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
19 December 13, 2024, this cause of action is dismissed against Defendant Empire and
20 therefore not alleged against Defendant, to the extent a response is required Defendant
21 denies the allegations in Paragraph 17 of the First Amended Complaint.

22 18. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
23 December 13, 2024, this cause of action is dismissed against Defendant Empire and
24 therefore not alleged against Defendant, to the extent a response is required Defendant
25 denies the allegations in Paragraph 18 of the First Amended Complaint.

26 19. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
27 December 13, 2024, this cause of action is dismissed against Defendant Empire and
28 therefore not alleged against Defendant, to the extent a response is required Defendant

1 denies the allegations in Paragraph 19 of the First Amended Complaint.

2 20. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
3 December 13, 2024, this cause of action is dismissed against Defendant Empire and
4 therefore not alleged against Defendant, to the extent a response is required Defendant
5 denies the allegations in Paragraph 20 of the First Amended Complaint.

6 21. Pursuant to Plaintiff's Request for Dismissal (Doc. 22) filed on
7 December 13, 2024, this cause of action is dismissed against Defendant Empire and
8 therefore not alleged against Defendant, to the extent a response is required Defendant
9 denies the allegations in Paragraph 21 of the First Amended Complaint.

10 **PRAYER FOR RELIEF**

11 22. Defendant denies the allegations contained in paragraph 22 of the First
12 Amended Complaint.

13 23. Defendant denies the allegations contained in paragraph 23 of the First
14 Amended Complaint.

15 24. Defendant denies the allegations contained in paragraph 24 of the First
16 Amended Complaint.

17 25. Defendant denies the allegations contained in paragraph 25 of the First
18 Amended Complaint.

19 **GENERAL DENIAL/ AFFIRMATIVE DEFENSES**

20 1. Except as expressly admitted above, Defendant denies every allegation
21 contained in the First Amended Complaint.

22 2. Defendant denies all allegations and requests for relief in the "PRAYER"
23 clause of the First Amended Complaint.

24 3. Plaintiff's First Amended Complaint fails to state a claim upon which
25 relief may be granted.

26 4. Plaintiff's claims fail to the extent it lacks standing or is otherwise not
27 the real party in interest regarding their claims for damages as alleged in the First
28 Amended Complaint.

1 5. Plaintiff's claims fail to the extent it failed to mitigate its damages.

2 6. Plaintiff's alleged damages were not caused by Defendant's negligence
3 but were caused by (a) an act of God; (b) the public enemy; (c) the act of the shipper
4 or shipper's agent; (d) public authority; or (e) the inherent vice or nature of the goods
5 in question.

6 7. Plaintiff's damages, if any, were due to the fault of the shipper or
7 shipper's agent and are not attributable to any act, conduct, or omission of Defendant.

8 8. Plaintiff's damages, if any, were caused, in whole or in part, by the
9 actions or omissions of other persons or entities over which Defendant had no control
10 and for which Defendant is not liable. In the event any fault is attributed to Defendant
11 with regard to Plaintiff's alleged damages, which are denied, any recovery against
12 Defendant must be reduced and limited by the comparative fault of such other persons
13 or entities.

14 9. Plaintiff failed to meet its burden of proof.

15 10. Plaintiff's claims are barred by the doctrines of waiver, estoppel, and
16 unclean hands.

17 11. Plaintiff's damages, if any, were the result of independent, intervening,
18 or superseding causes unrelated to any of Defendant's conduct.

19 12. Defendant could not foresee the Cargo would be stolen by unknown
20 third-party criminals and therefore has no liability.

21 13. Plaintiff's claims for damages are barred or subject to reduction to the
22 extent such damages were compensated by collateral sources.

23 14. The shipment referenced in the First Amended Complaint was subject to
24 the terms, conditions, exceptions, defenses, limitations, and limitations of liability of
25 the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701, et seq. If any loss
26 or damage resulted to the shipment as alleged in the First Amended Complaint, which
27 is denied, Defendant is not liable, or in the alternative, Defendant's liability is limited
28 by virtue of COGSA and/or other applicable legislation.

1 15. The allegations in the First Amended Complaint are also governed by
2 the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501 (also
3 known as the FAAAA).

4 16. The shipment referenced in the First Amended Complaint was subject to
5 the terms, conditions, exceptions, defenses, limitations, and limitations of liability
6 available under applicable bill(s) of lading, seaway bill(s), contract(s) of carriage,
7 booking note(s), tariff(s), service contract(s), contract(s) of affreightment or items of
8 a similar nature, including the right to subcontract on any terms or the right to limit
9 liability to a sum certain.

10 17. Plaintiff's alleged damages are too speculative and remote and therefore
11 cannot be recovered.

12 18. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure
13 to join all necessary and indispensable parties.

14 19. Plaintiff is not entitled to some, or all of the relief requested.

15 20. Defendant has no liability to Plaintiff because it delivered the Cargo in
16 good condition per the shipping instructions and documents provided by Kitzuma.

17 21. Defendant has no liability to Plaintiff because Kitzuma was acting as
18 Plaintiff's agent, and knew or should have known that Defendant may not have had
19 proper shipping documents, such that Kitzuma's negligence was the proximate cause
20 of Plaintiff's alleged losses.

21 22. Defendant states that there may be additional facts or circumstances to
22 be discovered that may substantiate one or more affirmative defenses under Fed. R.
23 Civ. P. 8(c). Defendant incorporates all such affirmative defenses herein and will seek
24 leave of the Court to amend this Answer and specifically state such affirmative
25 defenses as they become known.

1 DATED: February 24, 2025 **HUSCH BLACKWELL LLP**

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4 Bv: /s/ Andrew B. Kleiner
5 ANDREW B. KLEINER
6 *Attorneys for Defendant Empire*
7 *National, Inc.*
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1 I hereby certify that on the 1st day of February 24, 2025, I electronically filed:

2 **DEFENDANT EMPIRE NATIONAL, INC.'S ANSWER TO THE FIRST**
3 **AMENDED COMPLAINT** with the Clerk of the Court using the ECF system.

4 The ECF system will send notification of such filing to:

5 Richard L. Grant, Esq.
6 GRANT LAW, A Professional Law Corporation
7 15375 Barranca Parkway, Suite A-208
8 Irvine, CA 92618
9 rgrant@grantlawca.com

10
11 /s/ Andrew B. Kleiner

12 ANDREW B. KLEINER
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